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CONFIDENTIAL INFORMAL ADVISORY OPINION

November 17, 2015

The Honorable Gary Pendleton
NC House of Representatives
300 N. Salisbury Street, Room 610
Raleigh, NC 27603-5925

Re: Conflicts of Interest Associated with Legislative Actions Taken in Connection with
Agency Employee Insurance Committees

Dear Representative Pendleton,

This is in response to your recent request for advice concerning your legislative activities in connection with agency employee insurance committees and your adult son's business interests. This advice is given prospectively and is based upon and limited to the facts set forth below. It represents staff's interpretation of the State Government Ethics Act ("the Ethics Act") as authorized by G.S. 138A-13(c). This is not a recommended formal advisory opinion adopted by the State Ethics Commission and thus does not confer immunity.

Your son is an insurance broker. In your legislative capacity you have recently become involved in certain revisions to G.S. 58-31-60, which establishes insurance committees within State agencies and gives those committees the discretion to select insurance products offered to agency employees through payroll deduction. In particular those revisions will require that the committees competitively select insurance products at least every three years and require that committee members fairly reflect the geographical distribution of the work force and are capable of fulfilling the requirements of committee service.

G.S. 138A-31(a) restricts a legislator from using his or her public position in an official or legislative action that would provide a "financial benefit" to the legislator, a member of the legislator's extended family, or a "business with which the legislator is associated" if that benefit would influence the legislator. G.S. 138A-37(a) similarly restricts a legislator from taking legislative action which would

provide a "reasonably foreseeable" financial benefit to the legislator or a "person with which associated" if that benefit would impair the legislator's independence of judgment.

"Financial benefit" is defined as a "direct pecuniary gain or loss to the legislator or a "person with which associated," or a direct pecuniary loss to a business competitor. G.S. 138A-3(14c). "Person with which associated" includes a member of the legislator's *extended* family, a term defined to include the legislator and his/her lineal descendants (children, grandchildren) and ascendants (parents, grandparents), siblings, and their spouses. G.S. 138A-3(27c). It also includes those businesses owned by or which employ an *immediate* family member (spouse, minor children) and extended family members that reside in a legislator's household.

Even in those circumstances in which it has been determined that a legislator has a conflict of interest, there are a number of situations in which a legislator may take legislative or official action notwithstanding that conflict of interest. This would include legislative actions that would provide a similar benefit or detriment to all members of a profession, occupation, or general class. G.S. 138A-38(a)(1).

In applying the Ethics Act's conflict of interest standards, I have concluded that you do not have a conflict of interest that would restrict you from continuing your activities with respect to the particular changes to the agency employee insurance committee legislation outlined above. Based upon the facts provided, there is no indication that requiring those committees to review insurance products with greater frequency will result in a direct financial benefit to your son. Although, as an insurance broker, your son may have occasion to market various insurance products to agency insurance committees, there is no indication that a more frequent opportunity to present those opportunities to the committees would result in a reasonably foreseeable direct pecuniary benefit or loss to your son or a direct pecuniary loss to his competitor.

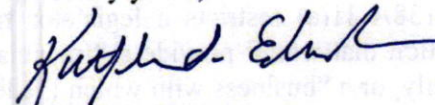
Moreover, to the extent your son is employed by an agency, your son's employer is not a "person with which associated," since he is not an immediate family member as that term is defined in the Ethics Act. And even if it were, there is no indication that the increase in the frequency of plan review would result in a foreseeable pecuniary benefit or loss to his employer or a loss to a competitor.

Finally, even if a conflict of interest existed, the shortening of the product review cycle would similarly impact all insurance brokers who place the insurance products in question. Thus, you would be permitted to take legislative action notwithstanding that conflict of interest.

Please contact me if you want to discuss this advice in more detail or have additional questions. In addition, if you would like to request a recommended formal advisory opinion from the Commission, please request that opinion in writing and provide any additional information about your request. Please note that Commission opinions are subject to review by the Legislative Ethics Committee.

Thank you for contacting the State Ethics Commission.

Sincerely yours,



Kathleen S. Edwards
Advice Attorney

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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BILL DRAFT 2015-MH-159 [v.3] (11/04)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
11/5/2015 11:11:35 AM

Short Title: Revise Employee Insurance Committee Req'ts. (Public)

Sponsors: Representative Pendleton.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY SELECTION AND STRENGTHEN THE FUNCTIONING OF
3 EMPLOYEE INSURANCE COMMITTEES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 58-31-60 reads as rewritten:

6 "§ 58-31-60. Competitive selection of payroll deduction insurance products paid for by
7 State employees.

8 (a) Employee Insurance Committee. – The head of each State government employee
9 payroll unit offering payroll deduction insurance products to employees shall appoint an
10 Employee Insurance Committee for the following purposes:

- 11 (1) To review insurance products currently offered through payroll deduction to
12 the State employees in the Employee Insurance Committee's payroll unit to
13 determine if those products meet the needs and desires of employees in the
14 Employee Insurance Committee's payroll unit.
15 (2) To select the types of insurance products that reflect the needs and desires of
16 employees in the Employee Insurance Committee's payroll unit.
17 (3) To competitively ~~select~~ select, no less frequently than every three years, the
18 best insurance products of the types determined by the Employee Insurance
19 Committee to reflect the needs and desires of the employees of that payroll
20 unit.

21 As used in this section, "insurance product" includes a prepaid legal services plan registered
22 under G.S. 84-23.1.

23 (b) Appointment of Employee Insurance Committee Members. – The members of the
24 Employee Insurance Committee shall be appointed by the head of the payroll unit. The
25 Committee shall consist of not less than five or more than nine individuals a majority of whom
26 have been employed in the payroll unit for at least one year. The committee members shall,
27 except where necessary initially to establish the rotation herein prescribed, serve three-year
28 terms with approximately one-third of the terms expiring annually. Committee membership
29 make-up shall fairly represent the geographical distribution and other characteristics of the
30 work force in the payroll unit and be selected without regard to any political or other
31 affiliations. It shall be the fiduciary duty of the payroll unit head to (i) appoint members of the
32 Committee who are capable of carrying out the purposes and duties set forth in this section in a
33 thorough and diligent manner and (ii) assure that the Employee Insurance Committee is
34 completely autonomous in its selection of insurance products and insurance companies and that



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1 no member of the Employee Insurance Committee has any conflict of interest in serving on the
2 Committee. A committee on employee benefits elected or appointed by the faculty
3 representative body of a constituent institution of The University of North Carolina shall be
4 deemed constituted and functioning as an employee insurance committee in accordance with
5 this section. Any decision rendered by the Employee Insurance Committee where the autonomy
6 of the Committee or a conflict of interest is questioned shall be subject to appeal pursuant to the
7 Administrative Procedure Act, or in the case of departments, boards and commissions which
8 are specifically exempt from the Administrative Procedure Act, pursuant to the appeals
9 procedure prescribed for such department, board or commission. The Committee shall meet as
10 often as needed to carry out the purposes and duties set forth in this section, but no less
11 frequently than quarterly.

12"

13 **SECTION 2.** This act becomes effective July 1, 2016, and applies to the
14 appointment or reappointment of Employee Insurance Committees on or after that date.



North Carolina General Assembly
House Of Representatives

REPRESENTATIVE GARY H. PENDLETON
49TH DISTRICT - WAKE COUNTY

October 7, 2015

To Whom It May Concern:

I am sorry I cannot be with you today but I am in Florida on business.

This report from Program Evaluation alarms me even though I talked with them when the study was initiated and told them I would oppose drastic changes. The final report hurts our rank and file State employees and continues to build the power of the Office of State Human Resources.

In my early years as an agent, I worked with State employees at the work-site in DPS and DOT. Most of those employees in the field had no one to talk to about financial and retirement planning, children with impairments, and other personal matters.

I spent many nights locked inside Central, Odom and Caledonia Prisons helping the correctional officers and other employees one-on-one. I went to all County DOT offices in the East and did the same for their employees. That gave the rank and file someone they or their loved ones could call for a listening ear and financial advice.

I sold my State Government business in 1993.

Why do high level bureaucrats in the Capital City think they understand the needs of a second shift employee at Broughton State Hospital or a third shift correctional officer in Northampton County or a motor grader operator in Macon County?

Clearly a Departmental Employee Insurance Committee understands their own employees and dependents needs and has committee members outside of Raleigh that work in the above areas.

If a member of the General Assembly introduces legislation to implement this PED Report, I will oppose it vigorously in the House Insurance and House State Personnel Committees, which I am a member.

I do not intend in seeing our State employees and dependents be abused by State Government. I will be introducing legislation to greatly improve the Departmental Employee Insurance Committees by making the payroll head a fiduciary that must assure their insurance committee meet at least quarterly, appoint employees who care, and are charged by the payroll head to be involved and well read on proposals. In addition, that all approved insurance plans are put out for bids at least every 24 months.

Sincerely,


Gary H. Pendleton

GHP/kmp



LOCAL NEWS

State worker charged with stealing from flex insurance program

Posted 2:02 p.m. yesterday

Updated 6:14 p.m. yesterday

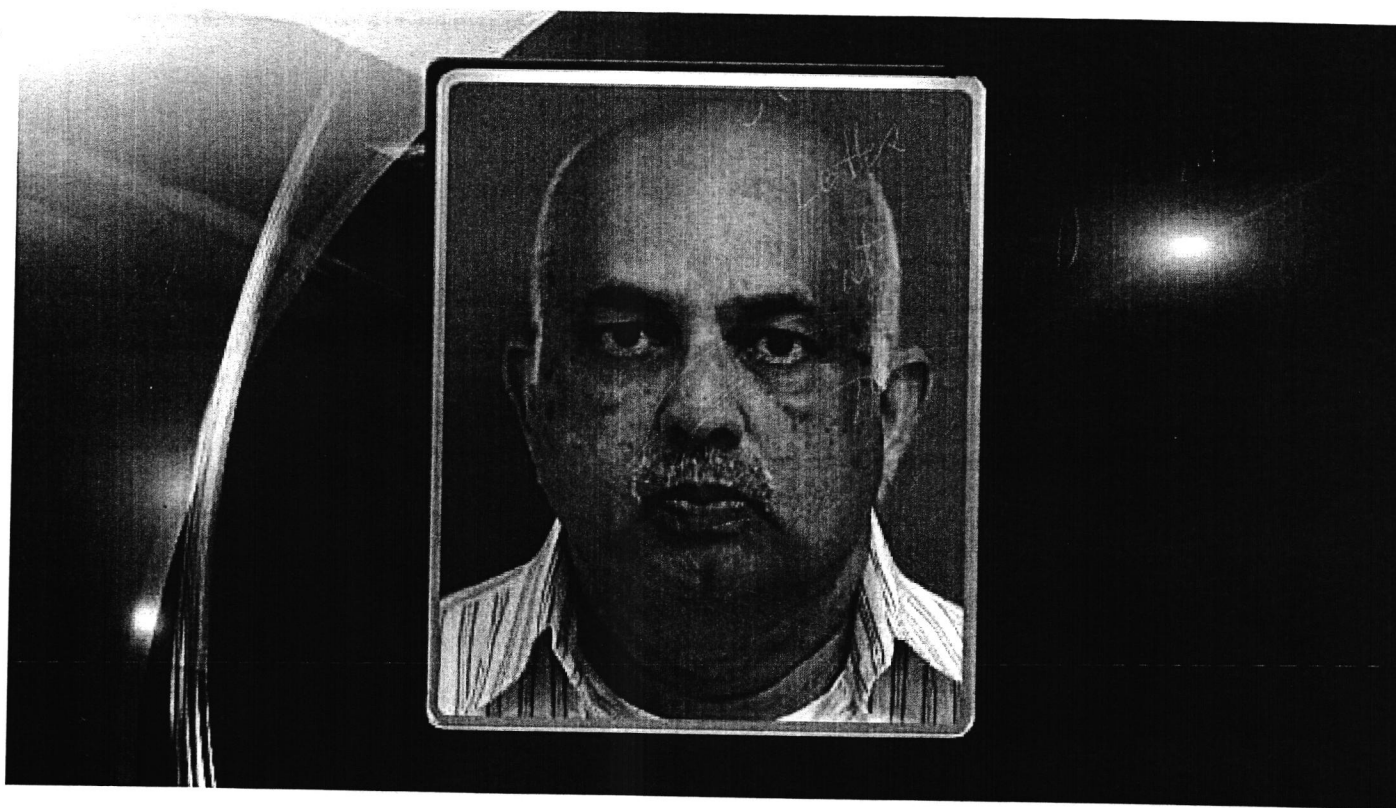
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over 2 years under Neal Alexander
RALEIGH, N.C. — The man who headed the flex insurance programs for North Carolina state workers was indicted Wednesday on charges that he took almost \$250,000 from the program for his own use.

A Wake County grand jury indicted Chakrapani Tademeti, 66, of 200 Tecumseh Court in Raleigh, with larceny by employee in excess of \$100,000 and obtaining property by false pretense in excess of \$100,000.

Tademeti, who retired in March after 20 years with the Office of State Human Resources, managed the

NCFlex program that allows state workers to make tax-free contributions to accounts that they can then use to pay medical and child care expenses during the year.

The indictment alleges that, between Aug. 31, 2012, and Feb. 28, 2015, Tademeti obtained reimbursement for \$249,950 that he reported spending on conference sponsorships, program advertisements and other services but never actually spent. Instead, according to the indictment, he took that money for his own use. 

OSHR Director Neal Alexander said that an internal review in April of a communications account managed by Tademeti that served several benefit plans raised concerns about possible misuse of funds. The State Bureau of Investigation and the Wake County District Attorney's Office were then brought in to review OSHR's findings, and the agency has requested an audit by the Office of State Budget and Management, Alexander said. 

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